Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inter-Carrier Compensation for for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	

To: The Commission

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"),[1] by its attorneys, hereby replies to comments filed on April 12, 1999 on the Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned docket.[2]

Introduction

The record shows widespread support for the "strong federal rule" approach to inter-carrier compensation for Internet service provider ("ISP")-bound traffic that CompTel proposed in its opening comments.[3] With the predictable exception of incumbent local exchange carriers ("ILECs"), commenters demonstrated a consensus in favor of treating such compensation the same as reciprocal compensation for the termination of local traffic.[4] The ILECs offered various

1 CompTel is the principal national industry association representing competitive telecommunications carriers and their suppliers. CompTel's 335 plus members include large nationwide companies as well as scores of smaller regional carriers.

2 *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Notice of Proposed Rulemaking (rel. Feb. 26, 1999) (*"NPRM"*).

3 *E.g.*, MCI WorldCom Comments, at 5-8.

4 *E.g.*, AT&T Comments, at 8-17; ICG Comments, at 11-12; Intermedia Comments, at 3-4; KMC Comments, at 6; MCI WorldCom Comments, at 18-19.

rationales that would give them a free ride on the backs of their competitors by avoiding payments to competitors for the costs incurred in terminating ISP-bound traffic originated on ILEC networks. Indeed, several ILECs audaciously proposed that competitive local exchange carriers ("CLECs") should compensate ILECs for originating ISP-bound calls. Even the one ILEC who endorsed the "minute is a minute" principle proposed to delay its implementation until access charges are brought down to cost-based levels.[5] CompTel believes that all of the ILECs' self-serving proposals, including even the more moderate ones, are at odds with the Communications Act and sound policy. In these reply comments, CompTel briefly rebuts the ILECs' misconceived proposals and reaffirms its support for the Commission's own conclusion that CLECs are entitled to compensation for the costs they incur to terminate ISP-bound traffic.[6]

CompTel also responds to the ILECs' arguments that Section 252(i) does not apply to inter-carrier compensation for ISP-bound traffic. Such arguments are premised on a fundamental misreading of the statute and the Commission's rules and decisions interpreting it.

I. ILECs MUST COMPENSATE CLECs FOR COSTS INCURRED IN DELIVERING TRAFFIC TO ISPs

At issue in this proceeding is the inter-carrier compensation that is due CLECs for delivery of ILEC originated traffic to ISPs. As the Commission correctly concluded in its *Declaratory Ruling* and in the *NPRM,* costs are incurred and compensation is owed for the costs of delivering such traffic.[7] The Commission should not allow its conclusions on this issue to be

5 *See* GTE Comments, at 18-24.

6 *See Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Declaratory Ruling (rel. Feb. 26, 1999) ¶¶ 7, 9, 21 (*"Declaratory Ruling"*); *see also NPRM,* ¶ 29.

7 *Id.*

swayed by ILEC claims that their costs in *originating* such traffic are going uncompensated.[8] Indeed, the Commission's recent declaration on the jurisdictional nature of such traffic has done nothing to change the fact that the ILECs can recover their origination costs through local exchange rates established under the auspices of state commissions. Further, the ILECs completely fail to consider the enormous additional revenues they receive through the rates they charge consumers for the second lines that often are the source of ISP-bound calls.[9] To the extent the Commission desires to examine the ILECs' recovery of costs associated with originating ISP-bound traffic, it should do so in a separate proceeding. However, the Commission should not delay the adoption of rules necessary to address the critical inter-carrier compensation issues identified in the NPRM.

As noted above and as set forth in CompTel's initial comments, the Commission should adopt federal inter-carrier compensation rules which establish, among other things, that compensation for the delivery of ISP-bound traffic should be paid at the same TELRIC-based rates established for reciprocal compensation for the termination of local traffic. As a result, the ILECs' alternative proposals for meet point billing, revenue sharing, no compensation, or delayed implementation should be rejected.

A. The Meet Point Billing And Revenue Sharing Proposals Offered By The ILECs Fail To Compensate For Costs Incurred In Delivering Traffic To ISPs

Several ILECs argued that the Commission should adopt a meet point billing or revenue sharing approach for ISP-bound calls. SBC's proposal is perhaps the most outrageous.[10]

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8 *See, e.g.*, Ameritech Comments at 9-14, Attachment A.

9 The demand for second lines – generated largely by Internet access – has propelled many ILECs to record profits.

10 SBC Comments, at 22-23.

According to SBC, CLECs should recover costs incurred in terminating ILEC-originated traffic in their own charges to ISPs, and ILECs should be able to recover their costs of originating ISP-bound traffic from one of several mechanisms – billing ISPs an "extension of the special access surcharge," billing CLECs, billing ISP subscribers, or dipping into the Federal Universal Service Fund.[11] This proposal is flawed for several reasons – the most significant of which is that it *ignores* the Commission's longstanding ISP exemption from access charges. SBC's meet point billing proposal fails because neither CLECs nor ILECs may impose access charges on ISPs. Although SBC attempts to overcome this shortcoming by incorrectly equating local business line rates charged to ISPs with interstate access charges, the reality is that local business line rates are not the equivalent of interstate access charges and are not designed to recover LECs' costs of originating or terminating ISP-bound traffic. As *Ameritech* noted, "any analogy to meet point billing or revenue sharing is inapt because those arrangements assume the application of access charges that will permit each carrier to recover its costs."[12] Because ISPs are exempt from interstate and intrastate access charges, the Commission must reject any proposal that presupposes the imposition of access charges.

For similar reasons, the *revenue sharing* proposals submitted by BellSouth and U S West also should be rejected.[13] BellSouth and U S West both contend that CLECs should share revenues received from ISP customers with ILECs that originate traffic to those ISPs. Like SBC, BellSouth and U S West *ignore* the ISP access charge exemption and wrongly equate business line revenues collected from ISPs with access revenues. As *Bell Atlantic* observes, revenue

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11 *Id.* SBC's proposals also are flawed because they do not recognize costs recovered through subscriber line charges.

12 Ameritech Comments, at 13.

13 BellSouth Comments, at 7-9; U S West Comments, at 3-8.

sharing "does not work here . . . because ISPs have been exempted from paying access charges."[14] Moreover, as *GTE* notes, "[s]ince there is no interstate revenue associated with the interstate service of transmitting ISP-bound traffic, there is no revenue to be shared between ILECs and CLECs."[15] Indeed, it is precisely because no access revenues are involved that the Commission now has a free hand to establish a cost-based compensation mechanism for delivering ISP-bound traffic.

Lastly, the Commission should reject the ILECs' proposals because the meet point billing system is inapplicable in this context. Historically, meet point billing arrangements were established by agreement between two ILECs, each of whom had relatively equal bargaining power. Further, these ILECs had the ability to recover their costs (and more) by imposing access charges upon subscribers. By contrast, more than three years' worth of experience in implementing the Telecommunications Act of 1996 confirms what everyone knew all along – CLECs are at a decided disadvantage when attempting to negotiate agreements with ILECs. Further, CLECs cannot impose any access charges upon their ISP customers, and the local rates they charge to those customers are subject to significant competition from other CLECs and the ILECs themselves. A mandatory meet point billing system makes no sense in this context, and the Commission should reject the ILECs' self-serving proposals to require such a system.

B. ILEC Proposals to Forego or Delay Payments Lack Legal or Policy Justifications

Recognizing the flaws in other ILECs' meet point billing and revenue sharing arguments, Bell Atlantic and Ameritech both propose the effective equivalent of *no* inter-carrier

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14 Bell Atlantic Comments, at 6; *see also* Ameritech Comments, at 13.

15 GTE Comments, at 23.

compensation.[16] These proposals must be rejected because they run counter to the Commission's conclusion that costs are incurred in delivering ILEC originated traffic to ISPs and, under the Act, compensation is owed.[17] The Commission's determination that these calls are jurisdictionally interstate does not entail a different conclusion. Initially, because the Commission has placed ISP-bound traffic outside its interstate access charge regime, there are no valid legal or policy arguments against requiring compensation at the same cost-based rate used for the exchange of local traffic. Further, as CompTel and many others explained in the opening round of comments, the jurisdictional classification of a call has no effect on the costs incurred or functionalities used in terminating it.[18] Denying compensation to CLECs would promote no result other than hobbling competitors and stifling competition for ISP accounts. Competition for ISP-bound traffic already has fostered the roll-out of advanced xDSL products and contributed to falling rates for Internet access. By requiring the ILECs to pay compensation for the costs of delivering ISP-bound traffic, the Commission will promote competition in the market for the telecommunications component of Internet access and will ensure that consumers receive all its attendant benefits.

Similarly, CompTel believes that there is no reason to wait 18 months, as GTE proposes, to allow time for the Commission to establish a rational cost-based rate for the termination of all

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16 Bell Atlantic Comments, at 6; Ameritech Comments, at 11-13. Although Bell Atlantic attempts to disguise its proposal as a "default" to be used in the event no negotiated agreement is reached through lopsided negotiations, it seems unlikely, in the absence of strong federal rules governing the negotiations process, that Bell Atlantic or any other ILEC would agree in negotiations to make inter-carrier compensation payments, if the default was to a no payment scenario.

17 *See Declaratory Ruling,* ¶¶ 7, 9, 21; *see NPRM,* ¶ 29.

18 *See, e.g.,* AT&T Comments, at 11.

types of traffic is similarly flawed.[19] Although CompTel agrees with GTE that a "minute is a minute" and that the charges imposed for terminating a minute should be the same with no differentiation based on the jurisdictional nature of the traffic, there is no reason to delay adopting that cost-based rate with respect to ISP-bound traffic. Particularly given the Commission's exclusion of ISP-bound traffic from the Commission's access charge regime, the Commission can act now to ensure that the same economically efficient TELRIC-based rates that apply to the termination of local traffic also apply to the termination of ISP-bound traffic.

II. INTER-CARRIER COMPENSATION ARRANGEMENTS FOR ISP-BOUND TRAFFIC ARE WITHIN THE SCOPE OF SECTION 252(i)

Several ILECs argue that inter-carrier compensation arrangements for ISP-bound calls do not fall within the scope of Section 252(i) because the statutory term "interconnection" applies only to the physical linking of two networks, not to transport and termination.[20] Like all previous ILEC challenges to Section 252(i), this one fails because it ignores the statutory language. Section 252(i) requires ILECs to offer "interconnection" to any requesting carrier "upon the same terms and conditions" as those provided in an agreement. The exchange of ISP-bound traffic between ILECs and CLECs qualifies as "interconnection,"[21] and the reciprocal compensation arrangements for such traffic qualify as "terms and conditions" of providing

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19 GTE Comments, at 18-20.

20 *E.g.,* Ameritech Comments, at 6, 17-18.

21 Section 251(c)(2) defines "interconnection" to include the linking of networks for the transmission and routing of "telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2). Hence, the FCC's determination that ISP-bound calls are jurisdictionally interstate does not remove such calls from the scope of the statutory term "interconnection."

"interconnection."[22] Therefore, even if the ILECs are correct that the term "interconnection" applies only to the physical linking of networks, they are incorrect in reading Section 252(i) to exclude reciprocal compensation arrangements for ISP-bound traffic.

Further, the FCC has sufficient authority under Section 201(b) to impose the functional equivalent of a Section 252(i) obligation upon ILECs for ISP-bound traffic. That section authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[23] The Supreme Court in *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999), construed that provision to give the Commission broad authority to implement the provisions of the Communications Act except where Congress reserved certain provisions for state authority. The same public interest reasons that justify Section 252(i) for the interconnection of local calls under Section 251(b)(5) – promoting competition and lower prices through non-discriminatory interconnection agreements – justify the identical requirement for ISP-bound calls under Title II of the Communications Act.

22 It is worth noting that ILECs and CLECs rarely establish compensation arrangements just for the physical linking of networks. Rather, the costs of "interconnection" are recovered through their reciprocal compensation rates. This is further evidence that reciprocal compensation arrangements are "terms and conditions" of interconnection.

23 47 U.S.C. § 201(b).

Conclusion

For the foregoing reasons, CompTel believes that the Commission should reject the ILECs' revenue sharing proposals and attempts to delay competition by denying competitors most-favored-nation rights, and, instead should adopt a "strong federal rule" framework for inter-carrier compensation as described in CompTel's initial comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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